CLEAN INDOOR AIR ORDINANCES:
WHY WORK ON CLEAN INDOOR AIR POLICY?

It's Big Tobacco's Biggest Nightmare

The tobacco industry has been worrying about secondhand smoke for a long time. A 1978 Roper Organization report to the Tobacco Institute issued a strong warning about this emerging threat to the industry's bottom line:

> "What the smoker does to himself may be his business, but what the smoker does to the nonsmoker is quite a different matter…. This we see as the most dangerous development yet to the viability of the tobacco industry that has yet occurred." *The Roper Organization, for the Tobacco Institute*
> http://legacy.library.ucsf.edu/tid/qra99d00

The passage of time, and increasing numbers of local and state clean indoor laws, did little to allay Big Tobacco's fears. Almost 20 years after the Roper report, industry executives continued to fret about the implications of clean indoor air policies:

> "Accommodation/pre-emption laws shape the real-world environment in which our customers and their non-smoking friends and associates live every day. If smokers are banished to doorways and loading docks in front of buildings, it makes smokers feel like outcasts and gives encouragement to the antis. On the other hand, if we live in a society that accommodates smokers and non-smokers alike, it sends the message that smoking is a viable life-style choice…" *Tina Walls, Philip Morris*
> http://www.pmdocs.com/getallimg.asp?DOCID=2041183751/3790

Better Yet, It Works!

Policy research validates the tobacco industry's anxiety. Clean indoor air policies are a "two-for-the-price-of-one" public health bargain; they reduce exposure to secondhand smoke, and reduce tobacco consumption by encouraging smokers to quit or at least cut back their consumption.

- Ordinances with strong workplace smoking restrictions reduced workers' reported exposure to secondhand smoke.[1]
- A study of San Francisco bar employees found improvements in their lung function after that state's smokefree bar law went into effect.[2]
- A review of 26 studies on the effect of smokefree workplaces found that the combined effects of workers quitting or cutting back reduces total consumption by 29%.[3]
- Early evidence indicates that clean indoor air policies help reduce youth smoking rates.[4, 5]

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[1] Pierce, J., Shanks, T., Pertschuk, M., Gilpin, E., Shopland, D., Johnson, M., Bal, D. Do smoking ordinances protect non-smokers from environmental tobacco smoke at work? *Tobacco Control* 3:15-20, 1994

[2] Eisner, M.D., Smith, A.K., Blanc, P.D. Bartenders' respiratory health after establishment of smoke-free bars and taverns. *Journal of the American Medical Association* 280(22):1909-1914, 1998.

[3] Fitchenberg, C.M., Glantz, S.A. Effect of smoke-free workplaces on smoking behavior: systematic review. *BMJ* 325:188-191, 2002.

The National Cancer Institute and the Centers for Disease Control and Prevention concur that clean indoor air policy development is an essential component of a comprehensive tobacco control program. In 2000, the CDC Task Force for Community Preventive Services conducted a systematic review of the evidence supporting various tobacco control interventions. The Task Force strongly recommends (its highest level of recommendation) clean indoor air policy development.

For more information:

This Americans for Nonsmoker's Rights (ANR) briefing paper provides an overview of the history and rationale of promoting clean indoor air laws and regulations. http://www.no-smoke.org/recipe.html

This Campaign for Tobacco-Free Kids (CTFK) fact sheet provides background on clean indoor air policies' effects on adult and youth smoking rates. http://www.tobaccofreekids.org/research/factsheets/pdf/0198.pdf

This fact sheet from the 2000 *Surgeon General's Report on Reducing Tobacco Use* includes information on the health effects of secondhand smoke, rates of secondhand smoke exposure, policy trends, and recommendations for policy development. http://www.cdc.gov/tobacco/sgr/sgr_2000/factsheets/factsheet_clean.htm

Go to the Resources & Links section of the TTAC web site for additional references.

Getting Started

A Little Background

Enacted clean indoor air policies come in two forms: legislation adopted by local jurisdictions (ordinances) or state legislatures (laws), and; regulations adopted by local boards of health or by state regulatory agencies.

Local jurisdictions (city councils, county boards, town meetings) and boards of health are the leaders and innovators in clean indoor air policy development. Local tobacco control ordinances and regulations provide stronger, more comprehensive protections than state level laws. In addition to the strength of their provisions, local policies have other advantages:

- They are easier to enact. Local elected officials are closer and more responsive to voters than their state and federal counterparts. Also, the tobacco industry is much less effective at the local level – as one Tobacco Institute executive put it, "we can't be everywhere at once."

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[4] Ohsfeldt, R., Boyle, R.G., Capilouto, E.I. *Tobacco Taxes, Smoking Restrictions and Tobacco Use*. NBER Working Paper No. 6486. Cambridge: National Bureau of Economic Research, March 1998.
[5] Wasserman, J., Manning, W.G., Newhouse, J.P., Winkler, J.D. The effects of excise taxes and regulations on cigarette smoking. *Journal of Health Economics* 10(1):43-64, 1991.

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- Enforcement is improved by a local enforcement agency that is more accessible and motivated than a removed state or federal agency.
- The debate and discussion set in motion during a local campaign educates the community and changes social norms.

Those states with strong, smokefree state level laws generally worked first at the local level, eventually generating enough support and momentum to pass a strong state law (e.g. California, Oregon, Maine, and Maryland).

A "To-Do" List for Planning and Running a Clean Indoor Air Campaign

This is a cursory overview of the key principles and issues to consider when planning a clean indoor air campaign. For a step-by-step guide, refer to the ANR publication *Clearing the Air: A Guide to Passing Local Clean Indoor Air Ordinances* (call 510 841-3032 for information).

Give yourself enough time. Policy change doesn't happen overnight. Depending on the level of interest and support for clean indoor air in your community, you may need to plan for a six-month or a multi-year campaign. If your community has no clean indoor air policies on the books, you might start with an ordinance or resolution making all municipal buildings smokefree, before introducing a more comprehensive ordinance. A good way to find out where you stand is to conduct an opinion poll and/or a restaurant survey on secondhand smoke and policy issues. For sample public opinion and restaurant surveys go to the Minnesota Smokefree Coalition website, scroll to the last sidebar "Sample Polls" at:
http://www.smokefreecoalition.org/issues/secondhandsmoke/community/

Develop a campaign plan. "Ready. Aim. Fire" is the best order; before launching your campaign, develop a plan detailing what needs to be done, in what order, by when, and by whom. As you develop your plan, think carefully about what resources you need – not just financial, but time, people and information. A campaign organizer is a must: coalitions should seek an in-kind contribution of a staff-person from a member organization, or raise funds to hire a local organizer. See the ANR worksheet "Getting Started" to help you put together your plan:
http://www.no-smoke.org/getstart.html

Build a strong coalition. Take a look at your community and your coalition. Does the coalition represent the diversity of your community? Recruit supporters and endorsements from a wide variety of organizations and groups:

- Health groups: hospitals, medical and dental societies, nursing associations, voluntary health agencies, insurance companies
- Youth-serving organizations: Parent/Teacher Association, Boys and Girls clubs
- Nonsmokers' rights groups: many states have such groups, (e.g., Minnesota Association for Non-Smokers' Rights, New Jersey GASP), Americans for Nonsmokers' Rights can connect you with ANR members in your community
- Labor organizations, neighborhood associations, church groups, etc.

See the Minnesota Smokefree Coalition tip sheet "Building a Coalition" at
http://www.smokefreecoalition.org/issues/secondhandsmoke/change/index.asp?sid=24&id=157&p=1

Create a system to activate grassroots supporters. Create a database of supporters (collect names and contact information via petitions and sign-up sheets); set up phone tree systems and list-serves to get information out quickly; hold letter writing or postcard parties; assemble a speakers bureau. Educate your coalition members on key issues and train them in media and policy advocacy.

Educate, educate, educate. Well before you publicly introduce a proposed law or regulation, get out in the community and make educational presentations on secondhand smoke and clean indoor air issues. Key groups to reach include potential supporters and allies, reporters and editorial boards, the business community, and, of course, elected officials. If you have the resources, run an educational media campaign on secondhand smoke and clean indoor air policies.

Start with your strongest ordinance. Prepare a draft ordinance or regulation, preferably based on the ANR model ordinance – which is based on years of experience in communities across the country. You may unintentionally incorporate compromises and exemptions if you start with another community's ordinance as a model. You can download a variety of model ordinances at: http://www.no-smoke.org/advo.html (scroll down to "Model Ordinances and Policies")

Reach consensus in advance on what is negotiable and non-negotiable. As you move through the political process, it may be necessary to compromise some provisions to keep the ordinance alive. Your coalition should discuss and agree in advance on what compromises you will accept, and what compromises would so weaken the ordinance that the coalition would oppose it. Be sure to communicate this to the sponsor of your proposal.

Get to know your elected officials and their staff. Hold preliminary meetings with elected officials to find out their position on secondhand smoke and clean indoor air policies – educate them and correct any misperceptions. Visit a public hearing to see how the council or board makes decisions and who has power (this helps you choose the best sponsor for your proposed ordinance). Develop a relationship with key staff (e.g., City Manager, City Attorney or County Counsel, etc.) who often handle the day-to-day logistics of considering and adopting a proposed ordinance.

Track and expose tobacco industry activity. When front groups roll into town, or local business groups start circulating industry-sponsored economic impact studies, alert the press and your elected officials. Make sure they see through the smokescreen. Run a search of the ANR Foundation Tobacco Industry Tracking Database to see if you can make the industry connection, at: http://www.no-smoke.org/tidbase.html

Do not schedule a vote until you have the votes. Do a head count before a formal public hearing where the proposal will be voted on. If you find that you do not have the votes, postpone and spend more time educating undecided or swing votes.

Seek out expertise and support. The national tobacco control organizations can offer invaluable expertise and technical support as you plan and run your campaign. Get in touch with Americans for Nonsmokers' Rights, the Campaign for Tobacco-Free Kids, the state and national offices of the American Cancer Society, American Heart Association and the American Lung

Association. State and national public agencies also have a wealth of information and expertise, get in touch with your state health department and the Office on Smoking and Health.

Portland Maine's Story:

Citizen's for a Healthy Portland ... A Story of Policy and Environmental Change

Local Ordinance Passage Steps

For more information:

The Americans for Nonsmokers' Rights website includes a variety of materials on planning and running a local clean indoor air campaign, including a planning worksheet, model ordinances, lists of enacted ordinances, and tip sheets on media and policy advocacy. Scroll down to "How to Pass A Clean Indoor Air Ordinance" and "Local Clean Indoor Air Ordinances" at: http://www.no-smoke.org/advo.html

Local ETS Discussion List (localets-talk) is a private list-serve for advocates working to pass local clean indoor air ordinances. It is an excellent source of breaking news and a forum to exchange information and strategies. To apply to join localets-talk, go to: http://www.smokescreen.org/localets-talk/

The CDC's Office on Smoking and Health maintains a Media Campaign Resource Center – an extensive collection of tobacco counter-advertisements for print, radio, television, and billboards. Any non-profit or governmental agency can license the use of MCRC materials, many are low or no cost. The MCRC has close to 200 counter-ads on secondhand smoke. To browse the MCRC collection, go to: http://apps.nccd.cdc.gov/MCRC/

A "NOT-To-Do" List

Often, the industry can't completely stifle a proposed smoking restriction, especially at the local level. When it can't kill a smokefree proposal, Big Tobacco tries to hamstring it by promoting (usually behind the scenes) provisions that undermine its effectiveness – gutting public health protections and protecting industry profits. Be on the lookout for the following types of provisions:

- *Adults-only exemptions*. This provision allows establishments to allow smoking if they prohibit minors. This creates the impression that secondhand smoke is harmful only to youth, and that adult exposure is acceptable. It offers no protection to the workers in adults-only establishments. This is not a good substitution for specifically exempting bars from smokefree requirements.
- *After-hours exemptions*. This provision allows establishments to allow smoking after a specified hour. After-hour exemptions send a mixed message; secondhand smoke doesn't magically become safe later in the day. Voluntary compliance and enforcement efforts are more difficult when a person needs a watch to know if the law is in effect. Because many of

the toxins in secondhand smoke linger, it also means the venue is contaminated even during ostensibly smokefree hours.

- *Hardship exemptions*. This provision allows businesses to apply for an exemption to the ordinance if they document economic hardship. This reinforces the misconception that smokefree laws have negative economic impact. If such an exemption is politically unavoidable, damage can be limited by requiring businesses to document actual hardship with sales receipts data, and to demonstrate that any losses were caused by the ordinance (rather than poor business practices, seasonal fluctuations, or general downturns in the overall economy).
- *Grandfather clauses*. These provisions either create an extended effective date years after the enactment date, or provide exemptions for specified businesses. Postponing the effective date beyond the standard time period gives the industry time to regroup, reorganize and return to the council with proposals to repeal or weaken the law. Exempting some businesses leads to confusion (and resentment), and reinforces the idea that smokefree laws cause economic harm.

A "Be Very, Very Careful" List

Work from the inside out. The greatest health risks posed by secondhand smoke are in enclosed areas. People spend a great deal of time indoors, and enclosed workplaces and public places are significant sources of secondhand smoke exposure. Before promoting outdoor smoking restrictions, work to ensure that people in your community are protected when they are indoors.

A word about ballot measures. Most local tobacco control measures end up on the ballot thanks to tobacco industry opposition: a jurisdiction passes an ordinance and opponents – almost always with industry support – force it onto the ballot hoping that voters will overturn what the council has enacted. However, some advocates, frustrated by a seemingly impenetrable city council, consider taking the issue directly to the voters.

Although the public supports smokefree venues, and generally upholds enacted ordinances forced onto the ballot, the national tobacco control organizations unanimously discourage local coalitions from going to the ballot box. Ballot measures are more expensive – ad campaigns, direct mail pieces and phone banks run up the tab quickly. Losses on the ballot also linger: a city council may first reject an ordinance, only to pass the same proposal a year or so later; once the voters reject an ordinance, elected officials are reluctant to touch the issue for a much longer time.

The end of an era? Enclosed, separately ventilated smoking rooms. When the first smoking restriction ordinances began passing in the 1970s, the state-of-the-art ordinance established separate smoking and nonsmoking sections. Time passed, scientific evidence mounted, and social norms changed, and by the early 1990s the state-of-the art ordinance had changed. Now it required completely smokefree venues, sometimes offering an exemption for enclosed, separately ventilated smoking rooms (usually in restaurants or bars attached to restaurants). This exemption was a nod to political constraints, and offered no protections for the workers serving in them.

With the industry's aggressive campaign promoting ventilation as a solution, and a decade's worth of experience in how this exemption works, advocates are rethinking the wisdom of

enclosed, separately ventilated smoking rooms. Once enacted, this exemption is difficult to eliminate – businesses go to considerable expense to install such rooms. It may well be that in a few more years, these smoking rooms exemptions will join smoking and nonsmoking sections in the dustbin of tobacco control history.

For more information

The national voluntary health organizations (ACS, AHA, ALA), ANR, the CTFK and the SmokeLess States Initiative jointly developed "Fundamentals of Clean Indoor Air Policy." This consensus document provides advocates with clear, authoritative recommendations on policy provisions to include (and avoid), and principles for organizing a clean indoor air campaign. Download a PDF version of the guide at: http://www.ama-assn.org/ama/pub/category/7843.html

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Opposition Research: What To Expect From the Tobacco Industry

Over the years, the tobacco industry has spent millions of dollars to oppose clean indoor air policies. The industry's attacks generally fall into the following categories:

- Attacking the science of secondhand smoke
- Promoting ventilation as a solution
- Claiming that smokefree policies are economic poison for the hospitality industry
- Promoting state and federal preemption laws to shut down local policy development

The industry – well aware of its credibility gap – prefers to hide these activities behind more credible players, either co-opting legitimate organizations or funding front groups. All of these opposition strategies are described in more detail in the Resources and Links section of this website.

Two of the best ways you can derail these strategies when you encounter them are:

- Inoculate – educate your allies, the media and elected officials about these industry strategies and arguments BEFORE they hear them.
- Keep returning to the health issues – the industry knows it can't win when the focus is on the health effects of secondhand smoke. It throws out issues like ventilation or economic impact as ploys to divert attention from the real issues at hand.

The Philip Morris document "Conceptual Framework of Comprehensive Public Smoking Program" provides an illuminating summary of the tobacco industry's comprehensive battle-plan to oppose clean indoor air efforts, download a copy at: http://legacy.library.ucsf.edu/tid/zdj58e00

What To Do If You Are Preempted

First, be certain that you are preempted. The tobacco industry often alleges preemption, when in fact there is none. Review your state code for any language that might be construed as preemptive. Research legal decisions to see whether the courts have determined the effect of any questionable language.

If you have preemption, analyze its coverage. Preemption is a complex, often confusing scheme. Some states with preemption include grandfather clauses, giving some local jurisdictions the authority to work on local clean indoor air ordinances (e.g., Illinois). Other states preempt only select provisions, for instance allowing jurisdictions to pass clean indoor air ordinances with the exception of restaurant provisions (e.g., Michigan). Yet others preempt workplace and public place provisions, but allow cities and counties to adopt municipal ordinances or resolutions making local government offices smokefree (e.g., Oklahoma).

If, after careful research and analysis it is clear that your state does indeed preempt the possibility of any local clean indoor air policy development, don't give up hope. Many communities have made great strides through voluntary public education programs.

Create demand for smokefree air: Run an educational campaign on secondhand smoke. Place ads in the local press, run radio spots, develop short articles to insert in organizational newsletters. Promote restaurants and other businesses that have adopted voluntary smokefree policies.

Set up a voluntary policy project: Educate workplaces (that includes restaurants) and public places about the dangers of secondhand smoke, and the benefits of going smokefree. Help them develop and implement their own voluntary smokefree policies.

Help workers and customers advocate for smokefree venues. Set up a project that provides assistance and support to people concerned about secondhand smoke in their workplace or in public places. Help them encourage owners and managers to go smokefree.

Additional Resources on Local Policy Development

Americans for Nonsmokers' Rights offers a variety of materials, as well as trainings and technical assistance and support to advocates working on clean indoor air policies. For more information about the resources below, call (510) 841-3032.

- *Clearing the Air: A Guide to Passing Local Clean Indoor Air Ordinances.* This 42-page booklet offers step-by-step instructions to plan and run a local clean indoor air campaign. Coalitions across the country have used this guide to develop and implement successful ordinance campaigns.
- *Back to Basics* is a one-day on-site training on everything you need to know to organize a local clean indoor air ordinance campaign.

- The *Secondhand Smoke Presentation Manual* is a ready-to-go manual from which to assemble presentations on secondhand smoke and clean indoor air issues (a good resource for a speakers bureau). The topics include health hazards, legal issues, economic concerns, and policy options.

California Department of Health Services, *California Lessons in Clean Indoor Air: A Compilation of Campaign Stories, Implementation Tools, and Compliance Strategies*
This three-ring binder is a hands-on tool kit including coalition exercises, case studies and campaign checklists. Written by the tobacco control coordinator for a county health department, this is an especially valuable resource for local and state health department staff working on local policy development. To order a copy, contact Paul Hunting at the California Tobacco Control Section, (916) 322-6262.